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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of the)
Telecommunications Act of 1996)

CC Docket No. 96-115

Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other Customer)
Information)

AT&T COMMENTS ON REQUESTS FOR DEFERRAL AND CLARIFICATION

Pursuant to the Commission's Public Notice,
DA 98-836, released on May 1, 1998, AT&T Corp. ("AT&T")
agrees strongly that the Commission should temporarily stay
certain of its newly adopted rules governing carrier use of
Customer Proprietary Network Information ("CPNI"), pending a
decision on the petitions for reconsideration and/or
appellate review that will be filed in this proceeding.¹
Several aspects of the CPNI Order go well beyond statutory
requirements and needlessly impose extraordinary costs and
unnecessary burdens on carriers and their customers, with no
offsetting benefits. AT&T will address those issues in its

¹ Implementation of the Telecommunications Act of 1996:
Telecommunications Carriers' Use of Customer Proprietary
Network Information and Other Customer Information,
CC Docket No. 96-115, Second Report and Order and
Further Notice of Proposed Rulemaking, FCC 98-27,
released February 26, 1998 ("CPNI Order").

reconsideration petition, but emphatically supports the current requests to mitigate these harms in the interim.

At this juncture, the Cellular Telecommunications Industry Association ("CTIA") seeks a deferral and clarification of Sections 64.2005(b)(1) and (b)(3) of the Commission's rules so as to allow use of wireless CPNI to market mobile handsets and related information services, and to make winback offers. GTE Service Corporation ("GTE") seeks similar relief (styled as a request for temporary forbearance or stay) as to wireless CPNI, as well as use of CPNI for marketing modems related to advanced services, for marketing additional services in bundled offers, and for winback purposes generally.

AT&T strongly supports staying (and ultimately vacating) the CPNI rules, at least to the extent that they would preclude carriers from (1) using wireless CPNI for marketing of mobile handsets and related information services, and (2) using CPNI generally for winback purposes.² The Commission thus should invoke its authority under Section 1.103(a) of its rules to stay temporarily these aspects of the CPNI rules. This will avoid disrupting the customer-carrier relationship and denying to consumers the essential benefits of competition -- increased choice

² AT&T has no objection to the broader interim relief requested by GTE.

and service innovation -- until the Commission more fully considers these issues on reconsideration.

BACKGROUND

In the *CPNI Order*, the Commission implemented Section 702 of the Telecommunications Act of 1996 (which adds a new Section 222 to the Communications Act of 1934) by adopting a "total service approach" to a carrier's use of CPNI for marketing purposes. Specifically, the Commission construed Section 222(c)(1) to mean that a carrier may use CPNI, without customer approval, for providing or marketing service offerings among the categories of services (*i.e.*, local, long distance, and wireless) to which the customer already subscribes from that carrier. *CPNI Order*, para. 32. The Commission found that permitting carriers to use CPNI, without customer approval, to market offerings related to the customer's "existing service relationship" with the carrier under a "total service approach" offers convenience for the customer while preventing the use of CPNI in ways that the customer would not expect. In the context of the existing customer-carrier relationship, permission to use CPNI can be *inferred* because the customer has implicitly approved use of CPNI within that relationship. *CPNI Order*, paras. 21-35, 51, 53-58, 63-65.

The Commission, however, erroneously rejected the use of CPNI, without customer approval, for marketing of information services (such as voice mail) and customer premises equipment (such as mobile handsets), finding that

these are neither telecommunications services nor services used in or necessary to the provision of telecommunications service within the meaning of Section 222(c)(1). *Id.*, paras. 72, 77; Section 64.2005(b)(1). The Commission also erred in prohibiting the use of CPNI, absent customer approval, for marketing once the customer has switched its services to another carrier. *Id.*, para. 85; Section 64.2005(b)(3).

I. THE RULE PROHIBITING USE OF WIRELESS CPNI FOR MARKETING OF MOBILE HANDSETS AND RELATED INFORMATION SERVICES SHOULD BE STAYED PENDING RECONSIDERATION.

AT&T supports the requests of CTIA and GTE for a stay of those portions of the CPNI rules that would prohibit carriers from using wireless CPNI to market mobile handsets and related information services. AT&T believes the FCC has improperly construed the limitations of Section 222(c)(1) in this context.³

In particular, as the *CPNI Order* (paras. 24, 35) recognizes, carriers are permitted to use CPNI to market alternative or improved versions of the service from which the CPNI is derived. Converting cellular systems from analog to digital technology increases system capacity and spectrum efficiency and permits carriers to offer a broader

³ Indeed, the Commission acknowledged the possibility that "the public interest would be better served if carriers were able to use CPNI within the framework of the total service approach, in order to market CPE." *CPNI Order*, para. 77.

array of wireless services and improved security.⁴ Clearly, under the CPNI Order, carriers are permitted to use wireless customers' CPNI to market digital cellular service, without prior customer approval, because the digital service is an alternative version of the customer's existing subscribed service, and therefore such use is permissible under Section 222(c)(1)(a).

To obtain digital service from a particular carrier, the customer not only needs a digital (rather than analog) handset, but also must have the correct type of digital handset because different digital technologies have been adopted by different cellular carriers. The carrier must then activate the handset and program it with unique identification and security codes. Additionally, as CTIA and GTE both point out, the mobile handset is itself a part of the Title III radio service licensed by the FCC.

⁴ See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 12 FCC Rcd. 11267, 11269-70 (1997) (noting that the conversion of cellular systems from analog to digital technology will facilitate the offering of a broader array of wireless services and help ensure the privacy of cellular calls); Bundling of Cellular Premises Equipment and Cellular Service, 6 FCC Rcd. 1732, 1734 (1991) (recognizing that switching customers to digital cellular service will encourage the use of newer, more spectrum efficient technology); Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings, 2 FCC Rcd. 6244, 6245 (1987) (stating that digital technology promises improved spectrum efficiency, reduced equipment cost and size, and secure communications).

Accordingly, a mobile handset is, in effect, a part of the service from which the CPNI is derived or, like inside wire, is necessary to or used in the provision of telecommunications service. *CPNI Order*, para. 79.

Moreover, to the extent that a wireless carrier has already provided the customer with both a mobile handset and wireless service, then both the handset and the service should be viewed as part of the total service that the carrier provides and alternative improved versions may be marketed to the customer without approval.

Likewise, the carrier should be able to market related information services without prior customer approval when these services are offered as part of the total service package. This is consistent with the notion that voice mail allows wireless customers to use their telecommunications service more efficiently by turning off their mobile handsets to conserve battery life, while continuing to receive messages. In this manner, the information service is used in the provision of the wireless telecommunications service.

**II. THE RULE PROHIBITING USE OF CPNI FOR WINBACK PURPOSES
SHOULD BE STAYED PENDING RECONSIDERATION.**

As GTE correctly points out, there is no statutory prohibition on the use of CPNI to win back a customer with whom the carrier had a prior service relationship. Indeed, Section 222(d)(1) of the Act, properly construed, allows the

use of CPNI to initiate and render service, including to a former customer.

Although the Commission's rules expressly allow a carrier, with customer approval, to use CPNI to win back a former customer (Section 64.2005(b)(3)), the Commission apparently believes that the implied consent to use CPNI for marketing purposes is somehow revoked when a customer elects service from another carrier. However, a proper reading of the Act would allow carriers to access a former customer's information to regain the customer's business. Certainly, use of CPNI for winback marketing is the hallmark of competition in that carriers would make competing customized offers to the same customer.⁵

Moreover, there is no privacy interest at issue here. The customer previously had a relationship with the carrier and the carrier thus had the right to use the customer's telecommunications usage information. There is no reason to believe that the customer would expect this to change. To the contrary, customers would expect their previous carriers to seek to regain their business with even better tailored and more attractive offers.

⁵ That does not mean, of course, that a local exchange carrier could use local CPNI to engage in winback marketing when a CLEC submits an order to convert a customer to its own service. Use of another carrier's order, including a carrier or customer request to lift a PIC freeze, is clearly and separately forbidden by Sections 222(b) and 201(b). See CPNI Order, para. 85 and n.316.

Use of CPNI for winback is entirely consistent with the Commission's finding that "[m]ost carriers . . . view CPNI as an important asset of their business, and . . . hope to use CPNI as an integral part of their future marketing plans. Indeed, as competition grows and the number of firms competing for consumer attention increases, CPNI becomes a powerful resource for identifying potential customers and tailoring marketing strategies to maximize customer response." *Id.*, para. 22 (*emphasis added*). This is nowhere more true than in the customer winback arena.

Telecommunications carriers use numerous offers and calling plans to provide consumers customized communications offers that will best meet the consumer's needs. Given the fierce competition in the long distance market, millions of customers change their carrier every month as they try to optimize their telecommunications dollars. It is in the outcome of this competition, the switching of service providers, that the best opportunities arise for the consumer to reap benefits. To prohibit the use of CPNI for winback purposes, as the Commission has done, denies customers the very proliferation of choices that competition is intended to make available to them.

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CONCLUSION

For the reasons stated above, the Commission should stay its newly adopted CPNI rules to permit (1) use of wireless CPNI for marketing of mobile handsets and related information services, and (2) use of CPNI for winback purposes.

Respectfully submitted,

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May 8, 1998

CERTIFICATE OF SERVICE


I, Ann Marie Abrahamson, do hereby certify that on this 8th day of May, 1998, a copy of the foregoing AT&T Comments on Request for Deferral and Clarification was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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